



Legal Department

Cheyenne River Sioux Tribe
P.O. Box 590, Eagle Butte, SD 57625
(605) 964-6686/6687
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November 1, 2000

Tom Leckey
Deputy Secretary of State
500 E. Capitol Ave.
Capitol Bldg., Suite 204
Pierre, S.D. 57501
Via fax: 605-773-6580

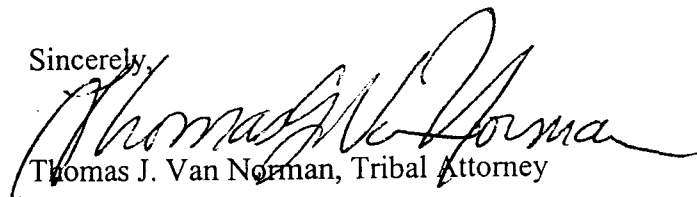
Re: "Joint Powers Agreement with the Cheyenne River Sioux Tribe" on UCC

Dear Deputy Secretary Leckey:

I have located the signed copy of the "Joint Powers Agreement Between South Dakota Secretary of State and Cheyenne River Sioux Tribe." That document was reviewed by Larry Long, and Larry forwarded it to Tom Adam for his review, and Steve Emery and Larry Long reached agreement on that version. All that remains is for final review by your counsel and your Office's approval.

Please call me or send an email to me at tjvannorman@aol.com if you have any questions. Thank you.

Sincerely,


Thomas J. Van Norman, Tribal Attorney

Encl.: Joint Powers Agreement (11 pages); Lawrence Long Letter (1 page)

cc: Tribal Chairman
Tribal Secretary
Administrative Officer
Planning Dept.
File



OFFICE OF ATTORNEY GENERAL

500 EAST CAPITOL AVENUE
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106

MARK BARNETT
ATTORNEY GENERAL

LAWRENCE LONG
CHIEF DEPUTY ATTORNEY GENERAL

June 29, 2000

Tom Leckey
Secretary of State's Office
State Capitol Building
Pierre, SD 57501-5070

Re: **Joint Powers Agreement with the Cheyenne River Sioux Tribe**

Dear Tom:

Attached please find the most recent draft of the proposed Joint Powers Agreement between your office and the Cheyenne River Sioux Tribe. The items in bold face are proposed changes from the Tribe, and the underlined items are proposed changes by this Office.

Mr. Emery of the Tribe will be in my Office at noon today to review these changes. If there are any major difficulties, please let me know as soon as possible.

I will hand deliver a copy of this letter and the attachment to Tom Adam for his review. Thank you.

Very truly yours,


Lawrence E. Long
Chief Deputy Attorney General

LEL:mjj
Enclosure

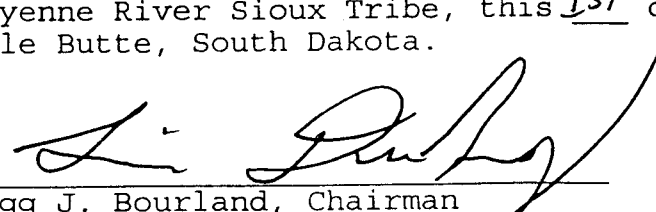
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EXECUTIVE RESOLUTION No. E-220-00

- WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and
- WHEREAS, the Tribe in order to establish its tribal organization, to conserve its tribal property, to develop its common resources, and to promote the general welfare of its people has ordained and established a Constitution and By-laws; and
- WHEREAS, the Tribal Council approved Resolution No.E-176-00-CR regarding adoption of the Uniform Commercial Code and Authorization for Electronic Filing, and a document called "Joint Powers Agreement Between South Dakota Secretary of State and Cheyenne River Sioux Tribe" is needed to finalize the agreement, a copy of which is attached as Attachment 1 and incorporated herein as if fully set forth; and
- WHEREAS, the Legal Department has reviewed the Joint Powers Agreement and recommends approval; and
- WHEREAS, this Executive Committee finds that this action is necessary to promote the general health, welfare, security, convenience, and welfare of the Tribe and its members; now
- THEREFORE BE IT RESOLVED, that the Executive Committee finds that Joint Powers Agreement Between South Dakota Secretary of State and Cheyenne River Sioux Tribe will promote the general health, welfare, security, convenience and prosperity of the Tribe and its members, and authorizes and directs the Chairman to sign said document.

CERTIFICATION


This is to certify that the foregoing resolution has been reviewed and approved by the undersigned Executive Committee of the Cheyenne River Sioux Tribal Council, acting under duly delegated executive authority and in the best interests of the Cheyenne River Sioux Tribe, this 1st day of November, 2000, at Eagle Butte, South Dakota.



Gregg J. Bourland, Chairman
Cheyenne River Sioux Tribe



Colette LeBeau-Iron Hawk, Secretary
Cheyenne River Sioux Tribe



Benita Clark, Treasurer
Cheyenne River Sioux Tribe

JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA SECRETARY OF STATE
AND
CHEYENNE RIVER SIOUX TRIBE

This Agreement is made and entered into on this ____ day of July, 2000, between the Office of the Secretary of State of the State of South Dakota whose address is State Capitol Building, 500 E. Capitol, Pierre, South Dakota 57501-5070 (the "Secretary"), pursuant to the authority provided in SDCL Ch. 1-24, and the Cheyenne River Sioux Tribe, whose address is P.O. Box 590, Eagle Butte, South Dakota 57625, (the "Tribe").

PURPOSE OF AGREEMENT

The State of South Dakota adopted Article 9 of the Uniform Commercial Code (the "UCC") at SDCL ch. 57A-9. Since 1974, the Office of the Secretary has been the designated UCC central filing office for the filing of financing statements, assignments, continuations, amendments, partial releases and terminations of UCC documents for which central filing is required, as well as the filing place for effective financing statements (EFS) under the Federal Food Security Act 1985, since 1987.

In addition, the Secretary has developed a system which will allow all filings with the Secretary under SDCL Ch. 57A-9 to be made electronically. This system will be implemented on or about July 1, 2000.

The Tribe, as part of its economic development efforts within the Cheyenne River Reservation (located in Dewey and Ziebach counties in South Dakota), wishes to provide a central filing system for lenders attempting to perfect a security interest in collateral under the tribal version of Article 9 of the UCC. The Tribe also wishes to make electronic filing available to all lenders, including itself when acting in the capacity as a lender.

To assist the Tribe in its efforts, the Secretary has agreed to serve as the central filing office for UCC filings by lenders perfecting security interests under tribal law and when the system is implemented to offer electronic filing to tribal lenders.[]

Consequently, the purpose of this Agreement is to set forth the terms and conditions under which the Secretary will act as the Tribe's official central filing office for UCC filings made under tribal law, thereby allowing the Tribe to promote economic development on its reservation by making available a UCC filing system identical for all practical purposes (with the exception for fixture filings and other local filings noted herein) to the South Dakota central filing system. The terms and conditions are set forth as follows:

1. Responsibilities of the Tribe.

The Tribe agrees to enact, within thirty (30) days of the approval of this Agreement by the Tribal Council and the appropriate authorities of the Bureau of Indian Affairs, a tribal ordinance (the "Ordinance") adopting verbatim South Dakota's current version of Article 9 of the UCC (currently found at SDCL 57A-9 and ARSD 5:04:02), with the exception noted herein for fixture filings and other local filings **as well as the exception for existing tribal law noted herein**. The Tribe further agrees to provide in the Ordinance adopting the said Article 9, that any statutory amendments by the South Dakota Legislature and administrative rules amendments by the Secretary will become effective as tribal law, to the extent the amendments are not inconsistent with the exceptions described herein, at the same time and in the same manner as they become effective under State law without further action by the tribal council. The parties agree that the purpose of this paragraph is to require that both state and tribal substantive Article 9 law, specifically including filing requirements and fees, will always be identical so that any lender who wishes to perfect a security interest under either state or tribal law or both, will be

dealing with the identical substantive and procedural rules, including filing requirements and fees, with the [] exception regarding fixture filings and other local filings as well as the exception for existing tribal law noted herein.

The tribal version of Article 9 of the Uniform Commercial Code (hereafter "UCC") adopted pursuant to this Agreement, shall not supplant, but, rather, is to be construed in light of the Tribal statutes existing at the time of the enactment of the UCC which govern foreclosures and repossessions of real and personal property within the exterior reservation boundaries. Act of March 2, 1889, § 4 (25 Stat. 888). These statutes include:

- A. Motor Vehicle Repossession Code, March 1, 1994.
- B. Leasehold Mortgage Foreclosure Code, February 12, 1996.
- C. Law and Order Code, §§ 10-1-1 (Foreclosure of Secured Obligations - Self Help Remedies Eliminated); Title X Chapter II (Actions to Recover Possession of Real Property); Title X Chapter III (Cancellation of Assignments or Other Privileges Granted by the Tribe), Revised in 1978.
- D. Landlord - Tenant Code, February 12, 1996.

These documents are attached hereto and incorporated herein by reference as if fully set forth herein.

For fixture filings and other local filings the parties acknowledge that under state law, there are two types of UCC filings that are not filed centrally filed with the Secretary. The first involves filings where the collateral is timber to be cut, or minerals, including oil and gas, or accounts subject to SDCL 57A-9-103(5). The second involves a fixture filing under SDCL 57A-9-313 where the collateral is goods which are or are to become fixtures. In these events the lender must file in the office of the Register of Deeds where a mortgage on the real estate involved would be filed or recorded in order to perfect a security interest in the collateral.

ministerial in nature, and the Secretary has no obligation to determine the validity of any filing. The parties further agree that all filings made under tribal law with the Secretary pursuant to this Agreement are tribal records and property of the Tribe.

3. Duration.

Prior to this Agreement going into effect, the Tribe will obtain authorization and approval for this Agreement by the Tribal Council and by the appropriate authority of the Bureau of Indian Affairs and will enact all of the provisions required to be in the Ordinance described in this Agreement. The initial term of this Agreement will be five years commencing from the date of this Agreement. The Agreement will continue thereafter for additional five-year periods until the Agreement is terminated under the termination paragraph below.

4. Termination.

A. This Agreement may be terminated by either party without cause upon 90 days written notice sent by US mail, first class, postage pre-paid to the other party at the address set forth in the introductory paragraph. This Agreement shall be terminated ninety days after receipt of the notice, unless the Tribe and the Secretary mutually agree otherwise in writing prior to the expiration of the 90-day notice.

B. Notwithstanding the provisions of the above paragraphs, the obligations of the Secretary under this Agreement depend upon the continued legislative authority to operate under state law the central filing system and perform the duties and services contemplated under this Agreement and the continued availability of appropriated funds and expenditure authority from the South Dakota Legislature for the purposes contemplated herein. The Agreement will be terminated if the Legislature removes the Secretary's authority or fails to appropriate funds or grant expenditure authority to the Secretary sufficient to cover the costs and expenses for this

Agreement. If sufficient funds or expenditure authority is not available, whether through the lack of appropriations by the State Legislature or otherwise, the Secretary shall provide written notice on or about April 1 or upon the completion of the then current session of the South Dakota Legislature which ever is later, of the pending lack of authority or insufficiency of funds, and the termination of the Agreement will become effective June 30 of the year in which notice was given or the effective date of the legislation, whichever is earlier.

C. This Agreement may be terminated, in whole or in part, by any party in the event of the substantial failure by the other party to fulfill its obligations under this Agreement. No such termination may be effected unless the terminating party gives written notice of intent to terminate to the other party. The defaulting party will have thirty (30) calendar days from the receipt of the notice to cure the alleged default.

D. If the default is not cured in a timely manner, the Agreement shall be terminated effective thirty days from the receipt of the notice. The failure of a party to enforce strict performance hereof as to any covenant, promise, term, condition or representation contained herein, shall not operate as a waiver of the right of that party to thereafter require such strict performance.

E. The Secretary agrees to continue to perform the duties required of the Secretary under this Agreement during any notice period, up to and including the date of termination. After the date of termination, the Secretary is unconditionally relieved from any and all duties, responsibilities and obligations associated with this Agreement, with the exception of the disposition or records pursuant to Paragraph 5 below.

5. Record preservation and disposition upon termination.

The Secretary agrees to preserve all filings received on behalf of the Tribe under this Agreement in exactly the same manner as the Secretary preserves UCC filings received under state law. If during the term of this Agreement, the Secretary upgrades equipment or in any manner changes the method of preservation of the UCC filings under state law, the Secretary agrees to perform the same upgrades and changes as to tribal filings.

In the event of termination of this Agreement, the Secretary agrees at the Tribe's sole option to deliver all records then currently maintained under this Agreement or to continue to preserve the tribal records in exactly the same manner as the Secretary would preserve similar state records for the requisite period then in effect (currently five years). In addition, the Secretary agrees to provide to the Tribe, at the Tribe's expense, copies of any magnetically stored tribal records together with both "print out" and digital copies of such tribal records as are then available in electronic form. The Secretary will only require the Tribe to pay the Secretary's actual cost of providing such records.

6. Tribe as Lender.

The parties recognize that the Tribe may from time to time become a lender and wish to file financing statements and otherwise access the tribal records in the Secretary's office electronically. For that purpose, the Tribe agrees establish a prepaid deposit account with the Secretary (in the same fashion as other lenders), and capitalize that account. The Tribe hereby authorizes the Secretary to make the appropriate deductions from the Tribe's prepaid deposit account as the Secretary would do with other lenders accessing the system. In the event that there are not sufficient funds in the prepaid deposit account to pay for the required filing fees or other charges, the Secretary may refuse the filing or refuse to perform the services. The parties

recognize that the Tribe in that respect, is being treated exactly in the same fashion as the Secretary would treat any other state or tribal lender. See SDCL 57A-9-403.

7. Court appearances by Secretary.

The Secretary agrees to respond, through designated office employees, to subpoenas issued by the Cheyenne River Sioux Tribal Court for the purpose of giving testimony therein relative to authentication of tribal records maintained by the Secretary under this Agreement or other relevant testimony. The Tribe agrees to guarantee that the expenses of employees of the Secretary subpoenaed to testify are paid. The Secretary agrees that those expenses will never be greater than comparable fees and expenses which would be paid in the event the Secretary's employees were appearing in state or federal court under similar circumstances.

8. Adoption of certified copy ordinance.

In order to minimize employee appearances in tribal court to authenticate records maintained by the Secretary under this Agreement, Tribe agrees to include in the Ordinance adopted pursuant to this Agreement provisions substantially similar to the rules of evidence found as SDCL 19-17-5 and SDCL 19-18-5, that allows copies of tribal records certified by the Secretary or a designated employee as true copies to be admissible as evidence in tribal court without further foundation.

9. Adoption of Filing Fee Ordinance.

The Secretary and Tribe agree that the Secretary, as compensation for the duties performed under this Agreement, may collect and retain the fees the Tribe requires to be paid for UCC filings and related services fees. The Tribe agrees to enact as part of the Ordinance adopted pursuant to this Agreement provisions as are necessary to establish that lenders, including the Tribe, pay the same fees for UCC filings, searches, copies and other services

provided by the Secretary concerning the tribal UCC filing system, that state lenders would pay to the Secretary for similar services under state law and ARSD 5:04:02. The Tribe specifically agrees to pay the same fees when the Tribe acts as the lender as any other lender would be required to pay and if the Tribe accesses the system electronically, the Secretary may deduct those fees from the account established in Section 6 of this Agreement.

10. Sovereign immunity.

Nothing in this Agreement should be construed as a waiver of the sovereign immunity of either the Tribe or the State of South Dakota. In addition, this Agreement may not be used in Court by either party for any purpose other than litigation, if any, concerning the terms and conditions of this Agreement.

11. Joint Powers Agreement.

The Secretary recognizes that SDCL Ch. 1-24 governing joint powers agreements bind the Secretary in the execution of this Agreement and that the Secretary has the power which the Secretary purports to exercise under this Agreement on behalf of the Tribe.

12. Agreements Concerning Liability Issues.

The Tribes agrees to include as part of the Ordinance adopted pursuant to this Agreement a provision making the Secretary immune from suit in tribal court for actions arising out of or in any way connected to the Secretary's performance of the services set forth in this Agreement.

The Tribe further agrees to hold the Secretary harmless and defend the Secretary from, any and all third party claims arising out of or in any way connected to the Secretary's performance of the services set forth in this Agreement as the Tribe's UCC filing office, provided, however, that nothing herein requires the Tribe to hold the Secretary harmless from third party claims arising solely from the errors or omissions of the Secretary.

13. General.

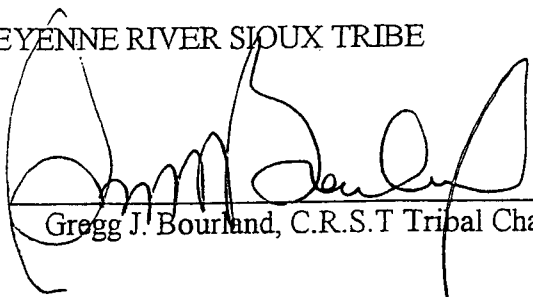
a. This Agreement, or any part thereof, or the benefits to be received hereunder, shall not be assigned, transferred, or disposed of to any person, firm, corporation, or other entity. This Agreement may not be modified or amended except in writing, which shall be expressly identified as part of this Agreement, and which writing shall be signed by the Secretary and the Tribe or their authorized designee.

b. The parties declare that no separate governmental entity as contemplated in SDCL 1-24-4 is being created to implement this Agreement, and that the cooperative undertaking herein described shall be administered by the Secretary and the **Tribal Secretary** for the Tribe and their authorized designees as contemplated in SDCL 1-24-5.

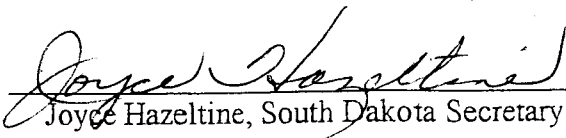
c. This Agreement and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests, and assigns of the respective parties hereto.

d. Upon final execution, copies of this Agreement will be filed in accordance with SDCL 1-24-6.1.

CHEYENNE RIVER SIOUX TRIBE

BY:  Date _____
Gregg J. Bourland, C.R.S.T Tribal Chairman

SOUTH DAKOTA OFFICE OF THE SECRETARY OF State Of South Dakota

BY:  Date 11-16-01
Joyce Hazeltine, South Dakota Secretary of State

The Foregoing Agreement is Hereby Approved by the Bureau of Indian Affairs Under Authority Delegated to the Authorized Official by the United States Secretary of the Interior:

BY: _____
(Type or print name of Authorized Official)

BY: _____ Date _____
(Signature of Authorized Official)

Title of Authorized Official

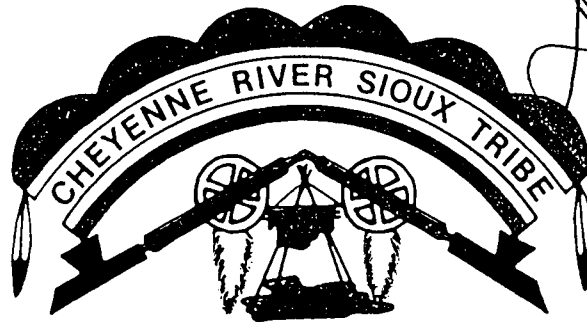
agreement.11

CHAIRMAN
Gregg J. Bourland

SECRETARY
Colette LeBeau Iron Hawk

TREASURER
Benita Clark

VICE-CHAIRMAN
Louis DuBray



P.O. Box 590
Eagle Butte, South Dakota 57625
(605) 964-4155
Fax: (605) 964-4151

TRIBAL COUNCIL MEMBERS

DISTRICT 1
Raymond Uses The Knife Jr.
Juanita Young

DISTRICT 2
David Hump

DISTRICT 3
Maynard Dupris
Edward Widow

DISTRICT 4
Mark Knight
Harold Frazier
Frank Thompson
Arlee High Elk

DISTRICT 5
James Chasing Hawk
Arlene Thompson
Lanny LaPlante
Robert Chasing Hawk

District 6
Michael Rousseau
Louis DuBray

TRIBAL MEMORANDUM

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Colette LeBeau Iron Hawk, Tribal Secretary

DATE: 9/7/00

SUBJECT : Executive Resolutions - Approved

Transmitted herewith are copies of the following Executive Resolutions which were duly adopted by the Cheyenne River Sioux Tribal Council during its Regular Session held on September 6, 2000:

- * Resolution No. E-176-00-CR/8-7-00: Adopts the UCC and Authorization for Electronic Filing, South Dakota Senate Bills 192 and 193, respectively and agrees that in the event that the South Dakota Legislature modifies either or both of these laws, the Cheyenne River Sioux Tribe shall adopt such changes automatically during the life of the UCC Filing Agreement between the South Dakota Secretary of State and the Cheyenne River Sioux Tribe. The UCC and Authorization for Electronic Filing, South Dakota Senate Bills 192 and 193, respectively, shall not supplant, but rather are to be construed in light of the tribal statutes existing at the time of the amendment of the UCC which govern foreclosures and repossessions of real and personal property within the exterior reservation boundaries; and that the Tribal Council incorporates into this resolution Senate Bills 192 and 193 as well as the statutes set forth in the appendix hereto referred to above and the said statutes are incorporated in this Resolution as if fully set forth hereinbelow.

The blue represents the thunder clouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka - The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is

Tribal Memorandum

Page Two

Resolution No. E-177-00-CR/8-11-00: That the Cheyenne River Sioux Tribe's Executive Committee supports the CRST CHR/Environmental Health Program's requirement on all food stand establishments operating for business on the Cheyenne River Reservation during the CRST Pow-Wow, Fair & Rodeo 2000.

Resolution No. E-179-00-CR/8-25-00: That the Cheyenne River Sioux Tribal Council does hereby grant Robert Chasing Hawk authorization to attend the National Conference on August 28-31, 2000 in Gallup, New Mexico.

Resolution No. E-180-00-CR/8-21-00: That the Executive Committee of the Cheyenne River Sioux Tribe, acting pursuant to its lawfully delegated authority, hereby authorizes the Tribal Chairman to submit the Tribe's Fiscal Year 2001 Abbreviated Model Plan for Low Income Home Energy Assistance Program and further authorizes him to sign the necessary documents to enter into a contract with the Department of Energy.

Resolution No. E-181-00-CR/8-25-00: The Cheyenne River Sioux Tribe Executive Committee, acting pursuant to its lawfully delegated authority, approves and submits the application to contract with the Branch of Roads, Aberdeen Area Office, Bureau of Indian Affairs, under the authority of Public Law 93-638, as amended as authorized through the 23 U.S.C. Section 204 (j), Indian Reservation Roads, updated scope of work of phase I and II of the \$18.3 million for Planning and Bridge design allocations in the amount of \$32,589.00, fiscal year 2001.

Resolution No. E-182-00-CR/8-26-00: That the Cheyenne River Head Start Program Parent Policy Council has adopted/approved at a duly called Policy Council Meeting on the 29th day of August, 2000 and signed by the President/Chairperson Farrell W. Smith.

CIH/wc

CC: Chairman

Treasurer

Administrative Officer

Council Members

District Officers

Central Records

Planning Director

LIEAP Program

Headstart Program

Tribal Health Director

CHR/Environmental Health Programs

File/2

E-165-00-CR

EXECUTIVE RESOLUTION NO. 165-00-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe, in order to establish its Tribal organization; to conserve its Tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws; and

WHEREAS, the Cheyenne River Sioux Tribal Council amended the Tribe's Uniform Commercial Code in June, 2000 by Resolution No. E119-00-CR; and

WHEREAS, upon the motion of the Tribal Council, the Revised Secured Transactions Article of the Uniform Commercial Code, South Dakota Senate Bills 192 and 193 (hereafter "UCC" and "Authorization for Electronic Filing") are hereby adopted, provided however, that they shall not supplant, but, rather, are to be construed in light of the Tribal statutes existing at the time of the amendment of the UCC which govern foreclosures and repossessions of real and personal property within the exterior reservation boundaries.¹ A list of these statutes is attached hereto as Appendix to Executive Resolution No. E-165-00-CR; and

WHEREAS, the Tribal Council has agreed that for the life of the UCC Filing Agreement between the South Dakota Secretary of State and the Cheyenne River Sioux Tribe, together with subsequent renewal agreements, if any; now,

THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribal Council hereby adopts the UCC and Authorization for Electronic Filing, South Dakota Senate Bills 192 and 193, respectively, and agrees that in the event that the South Dakota Legislature modifies either or both of these laws, the Cheyenne River Sioux Tribe shall adopt such changes automatically during the life of the UCC Filing Agreement between the South Dakota Secretary of State and the Cheyenne River Sioux Tribe. The UCC and Authorization for Electronic Filing, South Dakota Senate Bills 192 and 193, respectively, shall not supplant, but, rather, are to be construed in light of the Tribal statutes existing at the time of the amendment of the UCC which govern foreclosures and repossessions of real and personal property within the exterior reservation boundaries; and

BE IT FURTHER RESOLVED, that the Tribal Council incorporates into this Resolution Senate Bills 192 and 193 as well as the statutes set forth in the appendix hereto, referred to above, and the said statutes are incorporated in this Resolution as if fully set forth hereinbelow.

¹ Act of March 2, 1889, § 4 (25 Stat. 888) (delineating the boundaries of the Cheyenne River Indian Reservation)

PRESENTED TO
C.R.S.T. COUNCIL
DATE 9/6/00

Executive Resolution No. ____-00-CR
August 2, 2000
Page 2 of 3

CERTIFICATION

This is to certify that the foregoing resolution has been reviewed and approved by the undersigned Executive Committee, acting under executive authority and in the best interests of the Cheyenne River Sioux Tribe, this ~~7th~~ day of August at Eagle Butte, South Dakota.



Gregg J. Bourland, Chairman



Colette LeBeau-Iron Hawk, Secretary



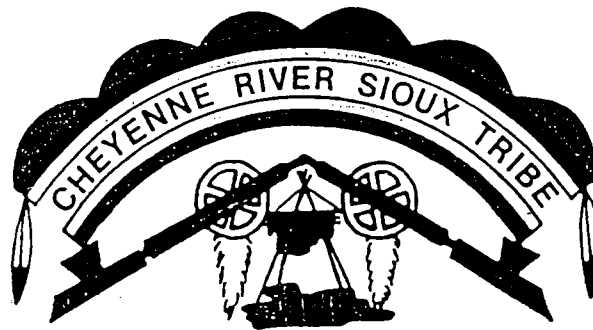
Benita Clark, Treasurer

APPROVED
DATE: 9/6/00 - RS
C.R.S.T. COUNCIL

SECRETARY

Appendix to Executive Resolution No. 165-00-CR

- A. Motor Vehicle Repossession Code, March 1, 1994.
- B. Leasehold Mortgage Foreclosure Code, February 12, 1996.
- C. Law and Order Code, §§ 10-1-1 (Foreclosure of Secured Obligations - Self Help Remedies Eliminated); Title X Chapter II (Actions to Recover Possession of Real Property); Title X Chapter III (Cancellation of Assignments or Other Privileges Granted by the Tribe), Revised in 1978.
- D. Landlord - Tenant Code, February 12, 1996.; and



TRIBAL MEMORANDUM

TO: SUPERINTENDENT, Cheyenne River Agency

FROM: Arlene Thompson, Tribal Secretary

DATE: 03/01/94

SUBJECT: Amendments to the C.R.S.T. Law and Order Code

Transmitted herewith is a copy of the following amendments to the Law and Order Code, which were duly adopted by the Cheyenne River Sioux Tribal Council during its regular session held on December 10, 1993.

Motor Vehicle Repossession: Must be posted thirty (30) days prior to becoming law. A copy of the document is attached.

Motor Vehicle Impoundment: Must be posted thirty (30) days prior to becoming law. A copy of the document is attached.

Appointment of Special Judges: Must be posted thirty (30) days prior to becoming law. A copy of the document is attached.

The amendments were finalized by the Legal Department this date. I apologize for the delay in transmitting this information.

For your information and/or approval.

cc: Chairman
Treasurer
Chief Judge
Chief of Police
Tribal Prosecutor
Public Defender
Criminal Investigator
Council Representatives
Committee Secretary
Central Records
Legal Department
File/2

TITLE X

Part Four: Motor Vehicle Repossession

10-4-1 Findings

The Tribal Council finds that:

(a) Reservation residents frequently need to borrow money to purchase motor vehicles. Money borrowed for this purpose is ordinarily secured by an interest in the purchased motor vehicle.

(b) Because of the size of the Reservation, its sparse population, and the long distances between Reservation communities and service areas, a motor vehicle is often a necessity of life for Reservation residents.

(c) In order to ensure that credit is available to Reservation residents for motor vehicle purchases, a quick and inexpensive mechanism is needed for creditors to foreclose on property securing defaulted debts. However, "self-help" remedies utilized in other jurisdictions are not appropriate in Reservation circumstances because of the importance of motor vehicles to Reservation residents.

(d) The impoundment and storage of motor vehicles presents an expense and drain on tribal governmental resources which needs to be minimized.

(e) This Part is enacted in order to balance the interests of creditors and therefore, the interests of Reservation residents who need credit to be easily obtained, and the interests of Reservation residents in the continued possession of their motor vehicles, as well as the interest of the Tribe in conserving tribal resources. This Part is to be interpreted liberally towards those interests.

10-4-2 Applicability

This Part applies to debts secured by interests in motor vehicles.

10-4-3 "Motor vehicle" defined:

For purposes of this Part, "motor vehicle" means a motorized, wheeled vehicle suitable for transporting persons on roads or highways. It does not include earthmoving or other construction equipment. It does include, without limitation, automobiles, motorcycles, pickup trucks, vans, and motorized mobile homes (unless said mobile home is the principle residence of the debtor).

10-4-4 Foreclosure actions

(a) Commencement

An action to foreclose a security interest in a motor vehicle shall be commenced by filing a verified (under oath) complaint with the Superior Court. Such verified complaint shall contain averments and exhibits demonstrating the following: (1) the amount of the original principle of the secured debt; (2) the amount of the principal outstanding, together with accumulated unpaid interest; (3) a copy of the instrument(s) evidencing the loan and creating the security interest; (4) proof of a written demand for payment and offer to work out a "payment schedule" or similar accommodation with the debtor; (5) proof of default on the secured debt. The complainant shall post a bond in the amount of \$250.00 at the time the complaint is filed with the Superior Court.

(b) Seizure Order

If upon examination of the verified complaint, the Court finds that it sets forth a prima facie showing of the requirements set forth in sub-paragraph (a) above and upon posting of the required bond, the Court shall issue an order directing the Tribal Law Enforcement Department to seize the motor vehicle and place it in impoundment pending resolution of the action and setting a date for hearing on the complaint, which date shall be within fourteen days of the order commanding seizure. The Tribal Law Enforcement Department shall serve a copy of the Complaint and order setting the hearing upon the debtor upon or immediately after seizing the motor vehicle by delivering it to the debtor personally or by leaving it at the debtor's abode, either posted on the front door of the abode or with any person residing at the abode above the age of thirteen years.

(c) Substitution of bond

The debtor may be given possession of the motor vehicle at any time after seizure upon application to the Court and (1) posting of a cash bond in the amount of the reasonable value of the motor vehicle or the amount outstanding on the secured debt, whichever is less, plus fifty dollars; and (2) written stipulation to the Court to comply with all orders of the Court concerning possession, foreclosure, and sale of the motor vehicle. If, after receiving possession of the motor vehicle, the debtor fails to comply with any order of the Court in the action, the bond shall be forfeited, fifty dollars remitted to the Tribe as costs of impoundment and storage, and the remaining proceeds of the bond distributed consistent with Section 10-4-7. If, at the termination of the action, the Court determines that the debtor has substantially complied with all orders of the Court, the Court shall order the terms of the bond satisfied.

(d) Hearing on action

The Court shall conduct a hearing on the complaint within fourteen days of issuing the seizure order. The hearing may be continued by fourteen days at the request of the debtor. The hearing may also be advanced at the request of the debtor, provided

that forty-eight hours notice be given to the creditor of the advanced hearing date. Except as provided herein, the Cheyenne River Rules of Civil Procedure shall apply to hearings under this Part.

(e) Settlement

If at any time, the debtor and the secured party reach an accord or settlement of the default, they shall notify the Court promptly and provide to the court, in writing, the provisions of the accord or settlement. Upon receipt of the provisions, the Court shall enter an order affirming the settlement and resolving the matter consistent with the provisions of the accord or settlement.

(f) Decision

If, after hearing, the Court determines that the Complaint is supported by a preponderance of the evidence, the Court shall issue a judgment in foreclosure of the motor vehicle. If the Court determines that the Complaint is not supported by a preponderance of the evidence, the Court shall dismiss the action and, in its order, provide that the bond is forfeited. Fifty dollars of the forfeited bond shall be remitted to the Tribe to compensate it for the costs of impoundment and storage of the motor vehicle. If the Court finds that the Complaint was brought in good faith and not frivolous, the remainder of the bond shall be remitted to the creditor. If the Court finds that the Complaint was brought in bad faith or was frivolous, the remainder of the bond shall be remitted to the debtor. The Court shall issue its decision within two weeks of the termination of the hearing.

(g) Default and Dismissal for want of prosecution

If the debtor, notice having been given, fails to appear at any hearing, a judgment of foreclosure shall be granted by default. If the creditor, notice having been given, fails to appear at any hearing, the Complaint shall be dismissed for want of prosecution. Upon dismissal for want of prosecution, fifty dollars of the bond shall be remitted to the Tribe as compensation for costs of impoundment and storage and the Court shall make further orders concerning the remainder of the bond as appropriate under the circumstances of the case.

10-4-5 Foreclosure Sale

If a judgment of foreclosure has been entered, the motor vehicle shall be sold at judicial sale. The sale shall be noticed and conducted in the manner provided in Sections 10-1-5 through 10-1-7 of the Title.

10-4-6 Redemption

The motor vehicle may be redeemed by the debtor in accordance

with the provisions of Section 10-1-9 of this Title, except that the period for redemption shall be limited to sixty days. If no redemption occurs within sixty days, the Court shall order, upon petition by the purchaser, that the parties to the foreclosure action perform all acts necessary for title to the motor vehicle to be registered to the purchaser in all necessary manners. Upon delivery of the motor vehicle to the debtor upon redemption, or, upon transfer of title after the redemption period has run, the Court shall order the creditor's bond dissolved.

10-4-7 Proceeds from sales

The proceeds of the sales shall be distributed in accordance with Section 10-1-10 of this Title, except that fifty dollars shall be added to the court costs as compensation to the Tribe for the costs of impounding and storing the motor vehicle. A deficiency judgment may be entered against the debtor in accordance with the provisions of Section 10-1-10(2).

10-4-8 Waiver of provisions


No waiver of any of the provisions of this Part shall be effective if such waiver occurs prior to the event causing the default on the secured obligation. The provisions of this Part may be waived by agreement of the creditor and debtor, in writing, after the occurrence of the event of default.

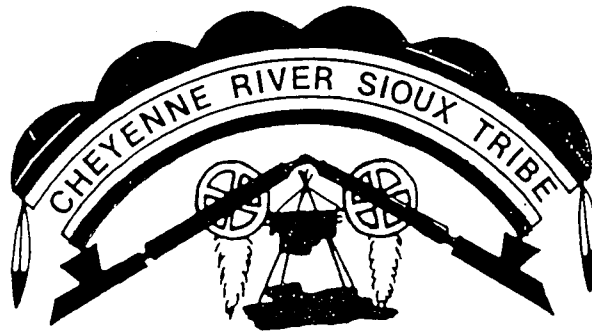
10-4-9 Exclusivity of Remedy and Illegality of "Self-Help"

This Part shall be the exclusive and sole means by which creditors and other secured parties may seek foreclosure or possession of motor vehicles upon default. "Self-help" remedies are hereby declared contrary to public policy and illegal within the Cheyenne River Indian Reservation. However, nothing in this Part shall: (1) prevent the voluntary surrender of the motor vehicle by the debtor if the agreement to surrender the motor vehicle was entered into after the event of default; and (2) bar the creditor from bringing an action at law to collect the amount of the secured debt as a judgment for money damages only.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 10, constituting a quorum were present at a meeting, duly and regularly called, noticed, convened and held this 10th day of December, 1993, Regular Session; and that the foregoing amendment to the Law & Order Code was duly adopted at such meeting by an affirmative vote of 10 for, 0 against, 0 not voting and 5 absent.


Arlene Thompson, Secretary
Cheyenne River Sioux Tribe



TRIBAL MEMORANDUM

TO: SUPERINTENDENT, Cheyenne River Agency

FROM: Arlene Thompson, Tribal Secretary

DATE: 2/15/96

SUBJECT: CRST Leasehold Mortgage Foreclosure Code: To clarify the law governing the rights, obligations, and remedies of the owners, sellers, lessors, and lessees, of buildings; and to establish laws and procedures which are necessary to avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages.

Transmitted herewith are copies of the Cheyenne River Sioux Tribe Landlord-Tenant Code, which was duly adopted by the Cheyenne River Sioux Tribal Council, during its regular session held on February 12, 1996, to become effective thirty (30) days after posting.

For your information.

cc: Chairman
Treasurer
Administrative Officer
Committee Secretary
Executive Director, CRHA
H.I.P. Director
Property & Supply Director
Judicial Department
Director, Oti Kaga, Inc.
Tribal Attorney General
Central Records
Council Representatives
District Chairmen (6)
District Secretaries (6)
File/2

#2

CHEYENNE RIVER SIOUX TRIBE
LEASEHOLD MORTGAGE FORECLOSURE CODE

Chapter 1. General Provisions

§ 1-1. Applicability and Jurisdiction.

This Leasehold Mortgage Foreclosure Code (hereinafter referred to as "Code") shall apply to any and all leasehold mortgages involving:

- (a) Buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, or any entity or agency of the Tribe; and
- (b) Persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.

§ 1-2. Purposes and Interpretation.

This code shall be strictly interpreted and construed to fulfill the following purposes:

- (a) To clarify the law governing the rights, obligations, and remedies of the owners, sellers, lessors, and lessees, of buildings;
- (b) To establish laws and procedures which are necessary to avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages.

§ 1-3. Definitions.

Unless the context plainly requires otherwise, the following terms shall mean:

- (a) "Borrower/Mortgagor." The Tribe, the Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) or non-Indian(s) who has (have) executed a mortgage or leasehold mortgage subject to the jurisdiction of this Code;
- (b) "Building." A structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage, and the like;
- (c) "Housing Authority." The Cheyenne River Housing

Authority, established by Tribal Ordinance 28 for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe;

- (d) "Indian." Any person recognized as being an Indian or an Alaska Native by any Tribe, or by the government of the United States;
- (e) "Lease." The residential ground lease or other agreement for land on which a leasehold mortgage has or will be given;
- (f) "Leasehold Mortgage." The mortgage of a lease of property given to secure a loan, which may be created under the auspices of any federal agency home buyer program, the Mutual Help Home Ownership program administered by the Housing Authority, or any other agreement entered between a borrower/mortgagor and a lender/mortgagee.
- (g) "Leasehold Mortgage Foreclosure Proceeding." A proceeding in the Tribal Court:
 - (1) To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in a lease for which a leasehold mortgage has been given under the home purchase program of any federal agency or otherwise; and
 - (2) To assign such lease to the applicable federal agency or the agency's assignee;
- (h) "Lender Designated Assignee." Any lender as defined in this code may assign or transfer its interest in a lease and/or leasehold mortgage to a designated assignee. If the lease and/or leasehold mortgage falls under a federal agency home buyer program or federal agency loan guarantee program, the lender must seek written approval from the Tribe of a proposed designated assignee any time prior to such assignment, transfer or assumption, except where the U.S. government and federal agencies guaranteeing or insuring the leasehold mortgage acts as a lender designated assignee;
- (i) "Lender/Mortgagee." Any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, the Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a borrower/mortgagor for construction, acquisition, or rehabilitation of a home.

It is also any lender designated assignee(s) or successor(s) of such lender/mortgagee;

- (j) "Lessee." A home buyer under any mortgage program, excepting the Mutual Help program, under which the home buyer is considered a tenant. The lessee may, for purposes of federal agency home mortgage programs, be the Housing Authority;
- (k) "Lessor." The beneficial or equitable owner of property under a lease for which a mortgage, as defined in this code, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s);
- (l) "Lien Creditor." The holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a leasehold mortgage under this code, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property;
- (m) "Mortgage." A lien as is commonly given to secure advances on, or the unpaid purchase price of, a building, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby;
- (n) "Owner." Any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a leasehold mortgage, long-term lease, or any other security arrangement;
- (o) "Person." Includes an individual or organization, and where the meaning of a portion of this code requires, it means a public agency, corporation, partnership, or any other entity;
- (p) "Redemption." The right of a borrower/mortgagor, judgment debtor or lien creditor to repay the amount owed on a building sold or reassigned upon the foreclosure of a leasehold mortgage, or on special or general execution against the building of a judgment debtor, or upon the foreclosure of any lien upon such building other than a lien for taxes or special assessment;
- (q) "Reservation." The Cheyenne River Indian Reservation;
- (r) "Tribal Court." The Tribal Court of the Cheyenne River Indian Reservation;

(SEAL)

(Signature)

(Date)

- (d) The Tribal Recording Clerk shall maintain a copy of the mortgage or other document in the records of the recording system and shall return the original to the person or entity that presented the same for recording.
- (e) The Tribal Recording Clerk shall also maintain a log of each leasehold mortgage or other document recorded in which there shall be entered:
 - (1) The name(s) of the borrower/mortgagor of each mortgage, identified as such;
 - (2) The name(s) of the lender/mortgagee of each leasehold mortgage, identified as such;
 - (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
 - (4) The date and time of the receipt;
 - (5) The filing number assigned by the Tribal Recording Clerk; and
 - (6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.
- (f) The certified copies of the mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

Chapter 3. Foreclosure Proceedings.

§ 3-1. Notice Procedures.

- (a) A borrower/mortgagor shall be in default when he or she is thirty (30) days past due on mortgage payment(s) to the lender/mortgagee.
- (b) If a borrower/mortgagor has been in default under a leasehold mortgage for sixty (60) days or more, the lender/mortgagee may commence a foreclosure proceeding in the Tribal Court, provided that the lender/mortgagee has complied with the notice procedures set forth in

subsection (c), below.

(c) Prior to initiating a foreclosure proceeding, a lender/mortgagee must:

- (1) Make a reasonable and good faith effort to arrange and have a face-to-face interview with the borrower/mortgagor at the mortgaged property, including but not limited to sending two letters to the borrower/mortgagor or his or her agent for the purpose of trying to arrange a face-to-face interview. The Lender/mortgagee may appoint an agent to arrange and conduct the face-to-face interview;
- (2) Notify the borrower/mortgagor in writing that the lender/mortgagee may initiate a foreclosure proceeding against the borrower/mortgagor;
- (3) Notify the borrower/mortgagor in writing that information regarding the loan and default may be given to credit bureaus;
- (4) Notify the borrower/mortgagor in writing of home ownership counseling opportunities/programs available through the lender or otherwise;
- (5) Notify the borrower/mortgagor in writing of other available assistance regarding the mortgage/default; and
- (6) When the mortgage was made pursuant to a U.S. government agency leasehold mortgage program:
 - (A) Notify the borrower/mortgagor in writing that if the leasehold mortgage remains in default for more than sixty (60) days, the lender/mortgagee may ask the applicable U.S. government agency to accept assignment of the leasehold mortgage if this is a requirement of the U.S. government program;
 - (B) Notify the borrower/mortgagor of the qualifications for forbearance relief from the lender/mortgagee, if any, and that forbearance relief may be available from the U.S. government if the mortgage is assigned;
 - (C) Provide the borrower/mortgagor with names and addresses of government officials to whom further communications may be addressed, if any; and

household" and includes all lessees, sublessees, or persons entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(q) "Tribal Court." The Tribal Court of the Cheyenne River Indian Reservation; and

(r) "Tribe." The Cheyenne River Sioux Tribe.

Chapter 2. Rights and Responsibilities of Landlords and Tenants.

§ 2-1. Rental Agreements.

- (a) Effect of Rental Agreements. The provisions of this Code, as well as the applicable laws identified in § 1-4, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent therewith, rental agreements may supplement these minimum rights and responsibilities.
- (b) Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his rights or remedies under this Code or any other applicable laws as identified in § 1-4; (2) to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; (3) to permit the landlord to dispossess him without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in § 3-1(a)(2). A provision prohibited by this subsection shall be unenforceable.
- (c) Term of Tenancy. In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.
- (d) Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the dwelling unit and the amount of rent shall be the fair market value of the rental unit.

§ 2-2. Rules and Regulations.

- (a) The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.
- (b) Such rules and regulations are enforceable against the tenant only if: (1) their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abuse use or make a fair distribution of services and facilities

- (h) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, serious nuisance, endangerment of public health or safety, breach of peace, or interference with the quiet enjoyment of the tenant;
- (i) Give sole possession of the dwelling unit to the tenant in accordance with the rental agreement and refrain from:
 - (1) entering the unit, except as authorized in § 2-4(h);
 - (2) making repeated demands for entry otherwise lawful under § 2-4(h) but which have the effect of unreasonably harassing the tenant;
 - (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or
 - (4) locking the tenant out of his dwelling unit without the tenant's consent; and
- (j) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this Code, the person authorized to manage the dwelling unit, the owner of the premises or his agent, and the person responsible for making repairs, where they are required.

§ 2-4. Tenant Responsibilities.

Each tenant subject to the provisions of this Code shall:

- (a) Pay rent without demand or notice at the time and place agreed upon by the parties;
- (b) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety;
- (c) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner;
- (d) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner;
- (e) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner;
- (f) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the

rental agreement, within 30 calendar days of such damage;

- (d) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace;
- (e) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord;
- (f) Use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it;
- (g) Abide by all rules and regulations promulgated by the landlord in accordance with § 2-2; and
- (h) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

§ 2-5. Tenant Remedies.

- (a) Conditions. Where a landlord has not complied with his responsibilities as set forth in §§ 2-3(a)-(g) of this Code and where the tenant has given notice to the landlord and the landlord has failed, within a reasonable period of time, to cure his noncompliance, the tenant may:
 - (1) Make necessary repairs and deduct the actual and reasonable cost of such repairs from his rent;
 - (2) Institute an action in the Tribal Court seeking:
 - (i) an order compelling the landlord to comply with his responsibilities as set forth in §§ 2-3(a)-(g);
 - (ii) an award of money damages, which may include a retroactive abatement of rent; and/or
 - (iii) such other relief in law or equity as the court may deem proper; and/or

- (3) Terminate the rental agreement in cases where the landlord's noncompliance renders the dwelling unit uninhabitable.
- (b) Harassment and Quiet Enjoyment. Where a landlord violates his responsibilities as set forth in §§ 2-3(h) and 2-3(i) of this Code, the tenant may:
- (1) Institute an action in the Tribal Court seeking:
 - (i) an order compelling the landlord to comply with his responsibilities as set forth in §§ 2-3(h) and 2-3(g);
 - (ii) an award of money damages; and/or
 - (iii) such other relief in law or equity as the court may deem proper. If the court finds for the tenant, the tenant shall recover damages not less than an amount equal to one month's rent and reasonable attorney's fees, provided that the tenant's complaint included a prayer for money damages; and/or
 - (2) Terminate the rental agreement.
- (c) Identification of Landlord. Where a landlord fails to identify himself to the tenant in accordance with § 2-3(j) of this Code, the tenant is under no obligation to pay rent and may terminate any existing rental agreement.

§ 2-6. Landlord Remedies.

Where a tenant has committed serious or repeated violations of his responsibilities as set forth in § 2-4 of this Code, the landlord may institute an action in the Tribal Court seeking an order compelling the tenant to comply with his responsibilities as set forth in §§ 2-4, an award of money damages, and/or such other relief in law or equity as the court may deem just and proper.

§ 2-7. Abandoned Dwelling Units.

Where a tenant has vacated a dwelling unit without notice to the landlord and does not intend to return, which is evidenced by the removal by the tenant or his agent of all or substantially all of his possessions and personal effects from the premises and either: (1) nonpayment of rent for one or more months, (2) terminated water or electrical utility service for a period of one or more months, or (3) an express written statement signed by the tenant stating that he does not intend to occupy the premises after a specified date, the landlord may regain possession of the dwelling unit without complying with the eviction procedures set forth in Chapter 3, as long as the landlord complies with the procedures set forth in subsections (a) and (b), below;

- (a) The landlord shall send notice to the tenant at the

tenant's last-known mailing address by certified mail, return receipt requested, stating in clear and simple language:

- (1) that the landlord has reason to believe that the occupant has abandoned the dwelling unit;
 - (2) that the landlord intends to reenter and take possession of the dwelling unit, remove any possessions and personal effects remaining in the unit, and rent the unit unless the tenant contacts him within 10 days of receipt of the notice;
 - (3) that if the tenant does not reclaim any possessions and personal effects removed from the dwelling within 60 days after receipt of the notice, such possessions and effects will be disposed of in accordance with § 3-9(b); and
 - (4) a telephone number and a mailing address at which the landlord can be contacted.
- (b) If the notice is returned as undeliverable, or if the tenant fails to contact the landlord within 10 days of the receipt of the notice, the landlord may regain possession of the dwelling unit, at which time any rental agreement in effect shall terminate. Any and all of the tenant's possessions remaining in the unit shall be disposed of in accordance with § 3-9(b), below.

Chapter 3. Eviction Procedures.

§ 3-1. Grounds for Eviction.

A tenant may be evicted from a dwelling unit when:

- (a) The rental agreement terminates for any of the following reasons:
 - (1) By reason of an expressed stipulation in the rental agreement.
 - (2) Nonpayment of rent within nine (9) calendar days of the agreed date of payment or, in month-to-month tenancies where there is no agreed date of payment, by the tenth day of the month.
 - (3) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with § 2-2, this Code, or any applicable building or housing codes.

- (4) Nuisance.
- (5) Serious nuisance.
- (b) The dwelling unit, or any part thereof, is occupied by one who never had a right or privilege to occupy such premises; or
- (c) The tenant originally had the right or privilege to occupy the dwelling unit other than under a rental agreement or lease but such right or privilege has terminated.

§ 3-2. Notice to Quit Possession.

- (a) When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in § 3-1, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit at least five days before the date specified in the notice for the tenant or tenants to quit possession.
- (b) The notice shall be addressed to each adult tenant of the dwelling unit and shall state the legally cognizable ground(s) for eviction and the date by which the tenant is required to quit possession of the dwelling unit.
- (c) The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable ground(s) for eviction using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing)."
- (d) One copy of the notice shall be served upon the adult tenants of the dwelling unit. Service may be made on any day of the week. The landlord may effect service of the notice to quit by:
 - (1) Causing an indifferent person, who is not a party and who is not less than 18 years of age, to deliver a copy of the notice to quit to the tenant personally, to the tenant's place of abode provided that the place of delivery is exclusively within the control of the tenant, or to a person of

suitable age and discretion at the tenant's place of abode; or

- (2) Mailing the notice to the tenant at the tenant's last-known mailing address by certified mail, return receipt requested, provided that if such notice is returned as undeliverable, service shall be effected in accordance with subsection (d)(1), above.

- (e) The landlord shall keep a copy of the notice and proof of service by affidavit or other manner recognized by law.

§ 3-3. Summons and Complaint.

- (a) If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall include:
 - (1) The names of the adult tenants against whom the suit is brought;
 - (2) A description of the rental agreement, if any;
 - (3) The address or reasonable description of the location of the premises;
 - (4) The grounds for eviction;
 - (5) A statement that any required termination notices have been served in accordance this Code or other applicable law, a copy of such notices, and proof of service of such notices by affidavit or other manner recognized by law; and
 - (6) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, or other relief as provided for in this Code.
- (b) Upon filing of the complaint, the clerk shall forthwith issue a summons and deliver the summons to the landlord or the landlord's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the landlord or the landlord's attorney, separate or additional summons shall issue against any defendants.
- (c) The summons shall be signed by the clerk, be under the

seal of the court, contain the name of the court and the names of the parties, be directed to the tenant, state the name and address of the landlord's attorney, if any, otherwise the landlord's address, and the date within which the tenant is required to answer the complaint, and shall notify the tenant that in case of the tenant's failure to do so, judgment by default may be rendered against the tenant for the relief demanded in the complaint.

§ 3-4. Service and Return of Summons and Complaint.

- (a) The landlord shall cause the summons and complaint to be served together upon each adult tenant against whom the suit is brought by:
 - (1) Delivering a copy of the summons and complaint to the tenant personally;
 - (2) Delivering a copy of the summons and complaint to the tenant's place of abode, provided that the place of delivery is exclusively within the control of the tenant;
 - (3) Delivering a copy of the summons and complaint to a person of suitable age and discretion at the tenant's place of abode; or
 - (4) Delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive such process for the tenant.
- (b) The summons and complaint shall be served by any indifferent person who is not a party and who is not less than 18 years of age. Service may be made on any day of the week. The plaintiff shall furnish the person making service with such copies as are necessary.
- (c) The person serving the summons and complaint shall make proof of service thereof by affidavit or other manner recognized by law to the court promptly and in any event within the time during which the person served must respond to the complaint.

§ 3-5. Defenses, Objections, and Counterclaims.

- (a) To defend against an eviction action, a tenant shall serve an answer or other pleading or motion, together with any cross-claims, counterclaims, or affirmative defenses, in accordance with Rule 12 of the Rules of Civil Procedure of the Tribe, provided that the time periods set forth in Rule 12 for the service of such

answers, pleadings, and counterclaims and replies thereto shall be reduced by one-half.

(b) A tenant may raise as an affirmative defense to an eviction action any of the following defenses:

- (1) Any applicable defense available under § 2-5 of this Code;
- (2) Any applicable defense available under general principles of contract law, including but not limited to estoppel, laches, fraud, misrepresentation, and breach;
- (3) In the case of an eviction based on nonpayment of rent, a defense that the landlord's noncompliance with §§ 2-3(a)-2-3(g) created a condition in the dwelling unit which materially endangered the health and safety of the tenant during the period for which nonpayment is alleged, provided that the tenant gave notice to the landlord and the landlord failed, within a reasonable period of time, to cure his noncompliance; and/or
- (4) Any other material defense which demonstrates that the eviction is unjust.

§ 3-6. Default Judgment for Failure to Plead.

In case of the tenant's failure to plead as required by § 3-5 of this Code, the court may, upon motion of the landlord, enter default judgment against the tenant for the relief demanded in the complaint, provided that the landlord's motion is supported by proof, by affidavit or other manner recognized by law, of timely service of the summons and complaint upon each adult tenant against whom the suit is brought.

§ 3-7. Hearing or Trial.

- (a) If the tenant timely serves an answer or other pleading or motion, the court shall set a hearing or trial date no less than ten (10) days following the date on which the tenant filed such answer or other pleading or motion, provided that if the tenant serves a pleading stating a cross-claim or counterclaim, the court shall set the hearing or trial date no less than ten (10) days following the date on which the landlord serves an answer or reply to such cross-claim or counterclaim.
- (b) The court shall mail written notice to all parties of the hearing or trial date at least five (5) days before such date.

- (c) All parties may present evidence and conduct oral argument at the hearing or trial.

§ 3-8. Judgment, Execution, Stay of Execution.

- (a) If, after trial or hearing or by stipulated agreement of the parties, the court enters judgment of possession of the dwelling unit in favor of the landlord, the court shall set a date on which such judgment shall be executed, which date shall be no less than five (5) days from the date of entry of judgment.
- (b) If judgment of possession of the dwelling unit enters in favor of the landlord, the tenant may move the court for a stay of execution of the judgment of up to three (3) months. Such motion shall be filed with the court within five days of entry of judgment and shall demonstrate that a stay of execution is necessary to avoid substantial hardship on the part of the tenant and would not result in substantial prejudice or injury to the landlord. Such motion shall be accompanied by a bond sufficient in amount to satisfy the judgement and pay for the reasonable use and occupancy of the dwelling unit during the length of the stay.
- (c) The court, in granting a motion for stay of execution, may require the tenant to make reasonable use and occupancy payments to the landlord during the length of the stay.

§ 3-9. Forcible Eviction.

- (a) Where the court enters judgment of possession in favor of the landlord and the tenant does not voluntarily vacate the dwelling unit on or before the date set for execution of judgment, the tenant may be forcibly evicted from the premises by a tribal law enforcement officer.
- (b) Following forcible eviction, the tenant's personal belongings and effects shall be stored by the landlord for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim his property, the tenant shall pay the reasonable cost of removal and storage. If the tenant does not so reclaim his property within thirty (30) days, the landlord may sell the property at a public auction in order to recover these costs. Upon request by the tenant, the landlord shall provide him with relevant information concerning such public auction, including the time, date and location thereof. Any proceeds from the sale in excess of the storage and removal costs shall be remitted by the landlord to the former tenant. Nothing in this section

- (D) Notify the borrower that if the borrower defaults during a repayment plan arranged other than during a face-to-face interview, the lender/mortgagee must have a face-to-face interview or attempt to arrange such an interview within thirty (30) days after the default or thirty (30) days before assignment is requested.

§ 3-2. Summons and Complaint.

A complaint in a mortgage foreclosure proceeding shall contain:

- (a) The name(s), as defendant(s), of the borrower/mortgagor and each person or entity claiming an interest in the property through the borrower/mortgagor subsequent to the recording of the mortgage, including each lien creditor (except the Tribe with respect to a claim for a tribal leasehold);
- (b) A description of the property subject to the mortgage;
- (c) A concise statement of the facts concerning the execution of the lease and the leasehold mortgage; the facts concerning the recording of the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action;
- (d) True and correct copies of each promissory note, if a Leasehold mortgage then a copy of the lease, the mortgage, or assignment thereof relating to the property (Appended as exhibits); and
- (e) A statement and proof by affidavit or other manner recognized by law that all relevant preconditions to initiation of the foreclosure proceeding, as set forth in this Code, tribal law, federal laws and regulations, or the leasehold mortgage or security instrument, have been satisfied.

§ 3-3. Service of Summons and Complaint.

Service of the summons and complaint shall be effected according to the procedures set forth in Chapter 3 of the Cheyenne River Sioux Tribe Landlord-Tenant Code, provided that if the borrower/mortgagor is not residing in the county in which the mortgaged property is located and cannot be found after reasonable inquiry, service may be made by publication in the manner set forth in the Cheyenne River Sioux Tribe Rules of Civil Procedure.

§ 3-4. Relation to Other Proceedings.

- (a) If a judgment has been entered against the borrower/mortgagor by a court of competent jurisdiction in an action solely for recovery of the debt secured by a leasehold mortgage and the judgment is unsatisfied in whole or in part and the Court finds that the borrower/mortgagor has insufficient property to satisfy such judgement or execution thereof, foreclosure proceedings may be separately initiated, unless an execution against the mortgaged property of the borrower/mortgagor was issued in the said judgment.
- (b) After an action for foreclosure commences and while it is pending, no separate proceedings shall be had for the recovery of the debt secured by the leasehold mortgage, or any part thereof, unless authorized by the court.

§ 3-5. Cure of Default.

Prior to the entry of a judgement of foreclosure, any borrower/mortgagor may cure the default(s) under the mortgage by making a full payment of the delinquent principal and interest due to the lender/mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. In such case, any pending foreclosure proceeding(s) shall be dismissed.

§ 3-6. Foreclosure Proceedings, Judgement, Remedy.

- (a) Foreclosure proceedings shall be heard and decided by the Tribal Court according to the procedures provided in the Cheyenne River Sioux Tribe Civil Procedure Code.
- (b) If the alleged default has not been cured at the time of trial and the Tribal Court finds for the lender/mortgagee, the Tribal Court shall enter judgment:
 - (1) Foreclosing the interest of the borrower/mortgagor and each other defendant, including lien creditors, in the leasehold mortgage; and
 - (2) Assigning the leasehold mortgage to the lender/mortgagee or the lender's designated assignee subject to the following provisions:
 - (A) The lender/mortgagee may give the Tribe the right of first refusal on any acceptable offer to purchase the leasehold mortgage which is subsequently obtained by the lender or lender's designated assignee;
 - (B) The lender/mortgagee or lender's designated

assignee may only transfer, sell or assign the lease and/or leasehold mortgage to a tribal member, the Tribe, or the tribal Housing Authority, and the Tribe must approve an assignment or assumption of the lease on tribal trust land;

(C) Any other transfer, sale or assignment of the leasehold mortgage shall only be made to the Tribe, a tribal member, or an entity of the Tribe during the remaining period of the leasehold; and

(3) Upon good cause shown, enjoining the defendant(s) from damaging the mortgaged building.

§ 3-7. Right of Redemption.

(a) The borrower/mortgagor or judgment debtor may, unless otherwise agreed in writing, redeem the property within one-hundred eighty (180) days of entry of judgment by paying the lender/mortgagee or lender designated assignee(s) the purchase price together with interest thereon at the rate of 8 percent per annum from the date of default to the date of redemption, together with the amount of any assessments or additional costs.

(b) There shall be no right of redemption in the borrower/mortgagor or judgment debtor in connection with a leasehold mortgage administered held by the Secretary of the United States Department of Housing and Urban Development under any Federal Housing Administration loan guarantee program.

(d) The procedure for redemption shall be the same as that set forth in Title X of the Cheyenne River Sioux Tribal Code.

§ 3-8. Foreclosure as Complete Satisfaction of Debt.

A foreclosure of a leasehold mortgage shall operate as a complete extinguishment, satisfaction and payment of the debt secured by the mortgage. However, a foreclosure may not be considered to be satisfaction of an assignment of rents agreement under the mortgage.

§ 3-9. Foreclosure Evictions.

Evictions following judgment of foreclosure shall be conducted pursuant to the eviction procedures provided in Chapter 3 of the Cheyenne River Sioux Tribe Landlord-Tenant Code, provided that foreclosure evictions shall not be initiated until after the

expiration of the redemption period and after the borrower/mortgager, lessee, or occupier has received thirty (30) days' notice.

§ 3-10. No Merger of Estates.

There shall be no merger of estates by reason of the execution of a leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

Chapter 4. Miscellaneous Provisions.

§ 4-1. Repealer.

Any provisions of Chapter 1, Title X of the Cheyenne River Sioux Tribal Code which are inconsistent with the provisions of this Code shall be and are hereby repealed.

§ 4-2. Effective Date

This Code shall take effect on [month] [date], [year].

§ 4-3. No Retroactive Effect.


This Code shall apply prospectively to leasehold mortgages entered after the effective date of the Code. This Code shall have no retroactive effect.

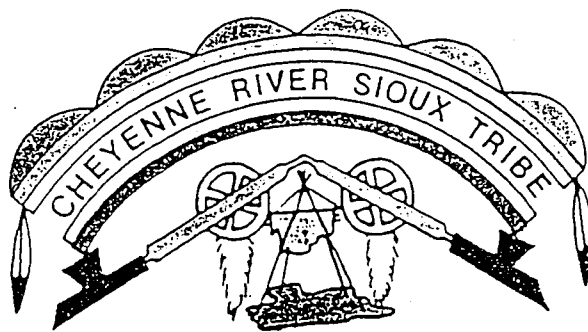
§ 4-4. Severability.

If any provision of this Code is found to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect and shall not be impaired or invalidated in any way.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 11, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 12th day of February, 1996, Regular Session; and that the foregoing Code was duly adopted at such meeting by an affirmative vote of 11 for, 0 against, 0 not voting and 4 absent.


Arlene Thompson, Secretary
Cheyenne River Sioux Tribe



TRIBAL MEMORANDUM

TO: SUPERINTENDENT, Cheyenne River Agency

FROM: Arlene Thompson, Tribal Secretary

DATE: 2/15/96

SUBJECT: CRST Landlord-Tenant Code: To clarify the law governing the rights, obligations, and remedies of the owners, sellers, lessors, and lessees, of buildings; and to establish laws and procedures which are necessary to avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages.

Transmitted herewith are copies of the Cheyenne River Sioux Tribe Landlord-Tenant Code, which was duly adopted by the Cheyenne River Sioux Tribal Council, during its regular session held on February 12, 1996, to become effective thirty (30) days after posting.

For your information.

cc: Chairman
Treasurer
Administrative Officer
Committee Secretary
Executive Director, CRHA
H.I.P. Director
Property & Supply Director
Director, Oti Kaga, Inc.
Judicial Department
Tribal Attorney General
Central Records
Council Representatives
District Chairmen (6)
District Secretaries (6)
File/2

LANDLORD-TENANT CODE

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CHEYENNE RIVER SIOUX TRIBE
LANDLORD-TENANT CODE

Chapter 1. General Provisions.

§ 1-1. Applicability.

This Tribal Landlord-Tenant Code (hereinafter referred to as "Code") shall apply to all agreements for the rental of housing, dwelling units, or accommodations intended for human occupation and residence. The Code shall not apply to agreements regarding:

- (a) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (b) Occupancy in a hotel, motel, or other commercial lodging.

§ 1-2. Jurisdiction.

The jurisdiction of the Tribal Court of the Cheyenne River Indian Reservation is extended over:

- (a) All housing, dwelling units, or accommodations intended for human occupation and residence which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, or any agency or entity of the Tribe; and
- (b) All persons or entities within the jurisdiction of the Tribe who sell, rent, lease, or allow persons to occupy housing, dwelling units, or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who rent, lease, or occupy such structures.

§ 1-3. Purposes and Interpretation.

This Code shall be strictly interpreted and construed to fulfill the following purposes:

- (a) To clarify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants;
- (b) To provide clear eviction procedures and to require landlords to comply with those procedures when evicting tenants;
- (c) To encourage landlords and tenants to maintain and improve dwelling units on the Reservation in order to improve the quality of housing as a tribal resource;

- (d) To establish laws and procedures which are necessary to obtain federal or state funding for tribal housing programs; and
- (e) To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the Reservation.

§ 1-4. Definitions.

Unless the context plainly requires otherwise, the following terms shall mean:

- (a) "Building and housing codes." Any law, ordinance, or governmental regulation of the Tribe or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.
- (b) "Drug-related criminal activity." The illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substance Act (21 U.S.C. § 802);
- (c) "Dwelling unit." A house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodations, such as hotel rooms;
- (d) "Guest." Any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant;
- (e) "Housing Authority." The Cheyenne River Housing Authority, established by Tribal Ordinance 28 for the purpose of constructing and maintaining dwelling units for public use within the territorial jurisdiction of the Tribe;
- (f) "Indian." Any person recognized as being an Indian or an Alaska Native by any Tribe, or by the government of the United States;
- (g) "Landlord." Any person, entity, or government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants;
- (h) "Nuisance." The maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or

safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property;

- (i) "Owner." Any person or entity jointly or individually having legal title to all or part of land or a dwelling unit, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement;
- (j) "Person." Any individual, organization, corporation, partnership, or other entity, and, where required by the language of this Code, a public agency;
- (k) "Premises." A dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants;
- (l) "Rent." All periodic payments to be made to a landlord under a rental agreement;
- (m) "Rental Agreement." Any agreement, written or oral, as well as valid rules and regulations regarding the terms and conditions concerning the use or occupancy of a dwelling unit or premises, including lease-purchase agreements;
- (n) "Reservation." The Cheyenne River Indian Reservation;
- (o) "Serious Nuisance." Inflicting bodily harm upon another tenant, the landlord, or the landlord's agent(s) or threatening to inflict such harm with the present ability to effect the harm and under circumstances which would lead a reasonable person to believe that such threat will be carried out; substantial and wilful destruction of part of the dwelling unit or premises; conduct which presents and immediate and serious danger to the safety of other tenants, the landlord, or the landlord's agent(s); using the premises for any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; or any drug-related criminal activity on the premises, engaged in by a tenant, his guest, or any other person under the tenant's control;
- (p) "Tenant." The lessee(s), sublessee(s), or person(s) entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. The term "tenant" is synonymous and interchangeable with the term "tenant

(4) The plaintiff's complaint, in addition to setting forth the facts and allegations on which he seeks to recover, may also set forth any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefor or compensation for the occupation of the premises, or both. When unlawful detainer is charged after default in the payment of rent, the complaint must state the amount of such rent.

(5) At the trial of any proceedings for forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that he was peaceably in the actual possession of the premises in question or was entitled to the possession at the time of the forcible detainer.

(6) In cases of tenancy of agricultural land where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord or his successor in interest, the tenant shall be deemed to have the permission of the landlord or his successor to hold over for a full year under the same terms and conditions as the original tenancy, and such tenant shall not be guilty of an unlawful detainer for such period by reason of his holding over.

(7) The remedies available herein shall be available to a tenant to regain possession from a subtenant in appropriate cases.

(8) No person other than the tenant of the premises and subtenant if there is one in actual occupation of the premises at the time the action is commenced need be made a party defendant. Any person entering into possession with the consent of the tenant after an action is commenced for forcible entry or forcible or unlawful detainer shall be bound by such action, whether made a party or not.

(9) Residential leases and rental agreements shall be construed as contracts, and general principles of real property law shall not apply.

(10) No action under this Code may be maintained by one spouse against the other.

Sec. 10-2-7 Judgment.

(1) If at trial, whether with or without a jury, the finding is in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises to the plaintiff.

(2) In a proceeding for unlawful detainer for neglect or failure to perform any condition or covenant under a lease or agreement under which property is held, or after default of the payment of rent, the judgment shall declare the forfeiture of such lease or agreement.

(3) At trial, the finder of fact, whether the jury or the judge without a jury, shall also assess damages caused to the plaintiff by the forcible entry or forcible or unlawful detainer, including damage for waste by the defendant during the tenancy, if proved, and shall also find the amount of rent due if such is in issue.

(4) When the action is for unlawful detainer after defaulting in the payment of rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not issue until five days after the entry of judgment, within which time the tenant or any subtenant, or other party interested in the continuance of the term, may pay into the court for the landlord the amount of the judgment and costs and thereupon that portion of the judgment shall be satisfied and the tenant's estate shall be restored. However, if such payment is not made within five days, the judgment may be enforced in its full amount and for the possession of the premises. In all other cases, the judgment may be enforced immediately.

Sec. 10-2-8 Time for Appeal.

(1) The time in which an appeal, if any, may be taken from an action for forcible entry or forcible or unlawful detainer shall be ten days and the appellate court may, but need not, allow expedited handling of such appeal.

(2) Appeals in other actions to recover possession of real property shall be handled in the usual manner.

III. CANCELLATION OF ASSIGNMENTS OR OTHER PRIVILEGES
GRANTED BY THE TRIBE

**Sec. 10-3-1 Procedure for Cancellation of Assignments
or Other Privileges Granted by the Tribe.**

(1) The Tribal Court shall have jurisdiction over actions to cancel, suspend, or modify any assignments of land or any other privilege granted or administered by the Tribe to any person.

(2) Such actions shall be commenced by the filing of a complaint or petition on behalf of the Tribe by an officer, agent, or attorney for the Tribe. A copy of such petition shall be served upon the person or persons whose assignment or other right will be affected thereby.

(3) The person or persons whose assignment or other privilege is affected by the action proposed in the complaint or petition shall have twenty (20) days from the date of service to file an answer or otherwise respond to the action in writing. No further pleadings nor any discovery shall thereafter be allowed unless the Court shall otherwise order in the interests of preventing serious injustice. No default shall be entered for failure to answer or respond.

(4) Following the receipt of the answer or other response, or at the end of the twenty-day period, if no response is filed, the Clerk shall schedule a hearing before a judge of the Tribal Court and cause notice thereof to be served upon the Tribe and the other parties. The scheduling of such hearings shall be given priority on the Court calendar over all matters for which no priority in scheduling is established in this Law and Order Code. The Clerk shall cause notice of the date, time and place of the hearing to be served upon the affected party or parties no less than 48 hours prior to the time set for the hearing. If personal service is not reasonable possible, such notice may be served by mailing a copy to the person or persons involved at their last known address and by posting a copy of said notice on the property to be affected, if any.

Sec. 10-3-2 Hearings on Cancellation of Tribal Assignments or Other Privileges Granted by the Tribe.

(1) The Tribal Court may, by rule, establish procedures for hearings as provided herein.

(2) At the time set for the hearing, the Judge shall examine the complaint or petition and any response thereto and shall determine whether proper notice to all parties has been provided.

(3) The Court sitting without a jury shall then hear such evidence as the parties wish to present and render its decision thereon.

(4) The person or persons whose assignment or other privilege may be affected shall have the following rights:

(a) To be represented by a professional attorney admitted to practice before the Tribal Courts or by a lay counselor; provided, however, that such attorney or counselor is hired by the person or persons affected at their own expense;

(b) To confront, examine and cross-examine all evidence presented against him;

(c) To present evidence in his own behalf;

(d) To receive written notice of any decision of the Tribal Court affecting any assignment or other privilege granted by the Tribe. Such notice may be personally served or may be mailed to such person at his last known address and a copy thereof posted in a conspicuous place on the property affected, if an interest in the use of real property is involved.

Sec. 10-3-3 Grounds for Cancelling, Suspending, or Modifying Any Assignment or Other Privilege Granted by the Tribe.

(1) The Tribal Court shall cancel any assignment or other privilege granted by the Tribe if, after receiving a petition or complaint from the Tribe and conducting a hearing thereon, it reasonably appears that the person or persons to whom the assignment or privilege has been granted has sold, leased, assigned or otherwise transferred the assignment or privilege or the right to use or take advantage of the assignment or privilege to any other person or persons or entity contrary to the terms, conditions, or covenants contained in the grant of the assignment or privilege and that by so doing they have derived a pecuniary or other benefit therefrom.

(2) The Tribal Court may cancel, suspend or modify any assignment or other privilege granted by the Tribe, if, after receiving a petition or complaint and conducting a hearing thereon, it reasonably appears that the person or persons to whom the assignment or privilege has been granted has done any act contrary to the terms, conditions or covenants contained in the grant of the assignment or privilege.

(3) The Tribal Court may cancel, suspend or modify any assignment or other privilege granted by the Tribe if, after receiving a petition or complaint and conducting a hearing thereon, it reasonably appears that such cancellation, suspension or modification is reasonably necessary to promote, implement, or preserve some governmental or proprietary interest of the Tribe. When ordering the cancellation, suspension or modification of an assignment or other privilege by the Tribe for the reasons set forth in this subsection, the Court shall condition its order upon such terms for the harvesting of crops, removal of livestock, relocation of persons or things, or winding up of business as appears just under the circumstances.

Sec. 10-3-4 Imposition of Penalties or Damages.

Whenever the Tribal Court finds grounds for the cancellation, suspension or modification of an assignment or other privilege granted by the Tribe, it may order the party or parties affected thereby to pay or repay to the Tribe any fees or charges past due, any money or the value of any benefits received by such party as a result of his violating any of the terms, conditions, or covenants contained in the grant of the assignment or privilege, and may assess damages for damage done to any Tribal property or interest as a result of the wrongful or improper acts of the party involved. Said charges may be enforced as civil judgments.

Sec. 10-3-5 Privilege Defined.

As used herein, the term "privilege" shall include all business licenses, range unit leases and/or permits, and any benefit, right or advantage granted to or enjoyed by a particular entity, person or group of persons by reason of any official action of the Cheyenne River Sioux Tribe.

Sec. 10-3-6 Exceptions to Procedures.

The procedures contained herein shall not apply to the cancellation of fishing, hunting, or driver's licenses or in any other case where some other procedure is set forth in this Law and Order Code or other Tribal Ordinance.

shall be construed to prevent the tenant from reclaiming any property remaining after the auction, provided the tenant can arrange to do so in a manner satisfactory to the landlord.

§ 3-10. Post-Judgment Remedies.

If within thirty (30) days after entry of a judgement awarding money damages and/or costs against a party, or within thirty (30) days after final resolution of an appeal to the appellate court from such a judgment, the judgment debtor, having been served notice of entry of judgment, has not paid the judgment amount in full or has failed to make installment payments in a manner agreed to by the parties, the Court shall, within fourteen (14) days of petition by the judgment creditor, order the judgment debtor to appear before it and answer under oath regarding the petition. At that time, the court shall determine what remedy is available and appropriate. Remedies include execution of the judgment, garnishment, property lien, mediation and contempt, as set forth in the Cheyenne River Sioux Tribe Code of Civil Procedure.

§ 3-11. No Self-Help Eviction.

No landlord may compel a tenant to vacate any premises without issuing a notice to quit on the tenant, initiating a civil eviction action, and obtaining a Court order as provided in this Code.

§ 3-12. Application of Tribal Rules of Civil Procedure.

Unless inconsistent with, or otherwise amended by, the eviction procedures set forth in this Chapter, the Rules of Civil Procedure of the Tribe shall apply to eviction actions brought pursuant to this Code.

Chapter 4. Security Deposits.

§ 4-1. Amount of Security Deposit.

A landlord may demand a security deposit in an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent.

§ 4-2. Payment of Security Deposit at Termination of Tenancy.

The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit was deposited less the value of any damages which any person who was a landlord of such premises at any time during the tenancy of such tenant has suffered as a result of such tenant's failure to comply with such tenant's obligations.

§ 4-3. Action to Reclaim Security Deposit.

Any tenant may bring an action in replevin or for money damages in Tribal Court to reclaim any part of his security deposit which may be due.

Chapter 5. Miscellaneous Provisions.

§ 5-1. Repealer.

Any and all provisions of Chapter II of Title X of the Cheyenne River Sioux Tribe Law and Order Code which are inconsistent with the provisions of this Code shall be and hereby are repealed.

§ 5-2. Effective Date.

This Code shall take effect on (Month) (Date), (Year).

§ 5-3. Retroactive Effect.

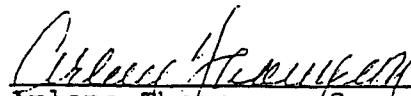
This Code shall have full retroactive effect and shall apply to all rental agreements subject to the provisions of the Code, no matter when entered.

§ 5-4. Severability.

If any provision of this Code is found to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect and shall not be impaired or invalidated in any way.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 11, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 12th day of February, 1996, Regular Session; and that the foregoing Code was duly adopted at such meeting by an affirmative vote of 11 for, 0 against, 0 not voting and 4 absent.



Arlene Thompson, Secretary
Cheyenne River Sioux Tribe

Sec. 10-1-3 Action to Foreclose Interest in Personal Property.

(1) An action to foreclose a security interest in non-trust personal property shall be commenced by filing a complaint in the Tribal Court.

(2) The Tribal Court shall determine the issues presented and may, by its judgment, direct the sale of the encumbered property, or so much thereof as is necessary, and direct the proceeds of the sale to the payment of the costs of court, the expenses of such sale and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct entry of a judgment for such balance against the defendant or defendants.

(3) If it is reasonably made to appear after the complaint is filed that the collateral is in imminent danger of being concealed, removed from the Reservation, or otherwise disposed of in a manner inconsistent with the security interest, the Court may order the person having possession or control over such property to appear and show cause why such property should not be taken into the custody of the Court or other security provided to prevent the improper disposal of the collateral.

(4) Sale of property under the Court's judgment shall be conducted in the manner provided for execution sales under Rule 36 of the Cheyenne River Rules of Civil Procedure.

Sec. 10-1-4 Action to Foreclose Mortgage.

(1) An action to foreclose a mortgage or other security interest in non-trust real property shall be commenced by filing a complaint in the Tribal Court.

(2) A complaint to foreclose a security interest in real property shall name as parties all persons who claim an interest in said property as a result of a proper recording of such interest in either the Tribal or County records, or both, as applicable. No interest of the Cheyenne River Sioux Tribe, whether recorded or not, may be affected in any action in which the Tribe is not a party by its own

affirmative action or consent. Interests in the secured property which are not recorded may be affected as if recorded and the owner thereof made a party.

(3) The Tribal Court shall determine the issues presented and may, by its own judgment, direct the sale of the encumbered property or so much thereof as is necessary, and direct the application of the proceeds to the costs of Court, the expenses of sale, and to the amount due the plaintiff. If it appears from the police officer's return on the sale that the proceeds thereof are insufficient and that an amount still remains due, the Court shall direct the entry of judgment for such balance against the defendant or defendants as provided below.

Sec. 10-1-5 Sale of Property - Notice.

(1) Before the sale of real property subject to a decree of foreclosure and order of sale, notice thereof must be given as follows: by posting written notice of the time and place of the sale giving a specific legal and general description of the property for 20 days in at least four public places on the Reservation, including one copy posted at the Tribal Headquarters, one copy posted in the post office nearest the property to be sold, one copy posted on the property to be sold, and one copy posted at the Tribal Courthouse.

(2) If ever there is a sale of property conducted without at least good faith and substantial compliance with the notice requirements as set forth herein, said sale may be declared void and of no effect by the Tribal Court.

Sec. 10-1-6 Conduct of Sale.

(1) All sales of property under decrees of foreclosure and orders for sale must be made at auction, conducted at the Tribal Courthouse, to the highest bidder, between the hours of 9:00 a.m. and 5:00 p.m. on any business day.

(2) Once sufficient property has been sold to satisfy the judgment plus the costs of court and of the sale, no more property shall be sold.

(3) The person conducting the sale may not be a purchaser or be interested in any purchase at such sale.

(4) If the property being sold consists of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may direct the order in which the property shall be sold when such property consists of several known lots or parcels. If a third person claims an interest in part of the property to be sold, he may require that such part be sold separately.

(5) If a purchaser refuses to pay the amount bid by him for property sold to him at sale, the officer conducting the sale may again sell the property to the highest bidder and if any loss be occasioned thereby, the officer may recover the amount of such loss, plus costs, from the bidder so refusing, in the Tribal Court. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

Sec. 10-1-7 Return on Sale.

(1) The Tribal police officer conducting the sale shall make a return thereon to the Tribal Court reciting all of the details of the sale.

(2) A certified copy of such return together with a certified copy of the Court's order directing said sale shall be filed by the purchaser in the appropriate county record's office.

Sec. 10-1-8 Title to Real Property.

(1) On a sale of real property, the purchaser is substituted for, and acquires all of the right, title, interest and claim of the judgment debtors thereto.

(2) The property so acquired is subject to redemption as provided herein.

(3) At the time payment for the sale is made, the officer conducting such must give to the purchaser a Certificate of Sale containing: a) the name of the purchaser, b) the name of the judgment debtor, c) the particular legal description of property sold, d) the price bid for each particular lot or parcel (if applicable), e) the total price paid, and f) notice that the sale is subject to redemption.

(4) The officer conducting the sale shall provide the purchaser with sufficient certified copies of the Certificate of Sale that the purchaser may file one copy with the office of the Recorder in each county where the property is located. The purchaser shall be provided with one certified copy for his own records and one copy shall be filed with the officer's return on the sale in the Tribal Court.

(5) If the purchaser of real property sold pursuant to an order of sale, or any successor in interest, should be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid plus interest at the rate of 8% per annum from the judgment creditor.

(6) If the purchaser of real property sold pursuant to an order of sale, or any successor in interest, fails to obtain possession of the property as a consequence of irregularity in the proceedings related to the sale, or because the property sold was not subject to execution and sale, the Court having jurisdiction thereof must, after notice and on motion of such party in interest, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser, with interest thereon at the rate of 8% per annum, and the judgment so revived has the same force and effect as would the original judgment as of the date of revival.

Sec. 10-1-9 Redemption.

(1) All real property sold as provided herein is subject to redemption, in the manner hereinafter provided, by the judgment debtor or any successor in interest in the whole or any part of the property.

(2) The judgment debtor or redemptioner may redeem real property from the purchaser within six months after the sale by paying the purchaser the purchase price together with interest thereon at the rate of 8% per annum from the date of sale to the date of redemption, together with the amount of any assessments or additional costs which the purchaser may have paid thereon after the date of the purchase.

(3) Written notice of redemption must be given to the Tribal Court and a duplicate filed with the office of the County Recorder in each county in which the property is situated.

(4) If the debtor redeems, the effect of the sale is terminated.

(5) Upon redemption by the debtor, the person to whom the payment is made must execute and deliver to him sufficient copies of a Certificate of Redemption acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Copies of such certificates shall be filed at the appropriate county recorder's office.

(6) If no redemption is made within six months, the purchaser or his assignee is entitled to a conveyance by means of a Tribal Police Officer's Deed at the expiration of such time. Such Deeds shall be recorded at the appropriate county recorder's office.

(7) Redemption payment must be made in U.S. currency or by certified or Cashier's check and be made to the purchaser or for him to the officer who made the sale or his successor in office.

(8) A judgment debtor or successor in interest desiring to redeem property must present to the person from whom he seeks to redeem or the officer: a) a certified copy of the judgment and order of sale under which he claims a right to redeem, and b) his own affidavit that he is the person entitled to redeem and showing the amount due to effect the redemption.

(9) Until expiration of the time for redemption, the Court may restrain the commission of waste or changing the character of the property, but it shall not be waste for the person entitled to possession of the property to continue to use it in the manner it had been previously used, or use it in the ordinary course of husbandry, or to make necessary repairs thereon, or to have reasonable enjoyment of the property.

(10) The purchaser, from the time of sale until redemption, is entitled to receive from the tenants in possession the rents of the property sold or the value of

the use and occupation thereof. However, when any rents or profits have been received by the purchaser or his assigns from the property thus sold, prior to redemption the amount of such rents and profits shall be a credit on the redemption money to be paid. The judgment debtor or person entitled to redeem has the right, prior to the expiration of the time for redemption, to demand of the purchaser or his assigns a written and verified statement of the amount of such rents and profits received and/or assessments or costs paid by the purchaser during the period of redemption. If such purchaser or his assign fails or refuses for a period of one month to give such statement, the redemption may, within 60 days of such demand, bring an action in the Tribal Court to compel an accounting and disclosure of such rents and profits, and until fifteen days after the final determination of such action, the right of redemption is extended to such redemptioner.

Sec. 10-1-10 Surpluses and Deficiencies From Sales.

(1) If there is surplus money remaining after the payment of the costs of court and of the sale and payment of the judgment creditor, such funds shall be distributed by the Court to the judgment debtor or other person entitled thereto.

(2) A deficiency judgment may be entered by the Court in a case involving the foreclosure and sale of real property whenever the amount due under the secured indebtedness plus costs of the court and of the sale exceed the reasonable value of the property at the time of sale. The Court is not bound by the price for the property received at the sale but may take evidence to determine the actual reasonable value.

II. ACTIONS TO RECOVER POSSESSION OF REAL PROPERTY

Sec. 10-2-1 Self-Help Remedies Forbidden.

Except in the case where a person in possession voluntarily surrenders such possession to another claiming a paramount right, self-help remedies to secure possession of real property are forbidden except as otherwise provided herein.

Sec. 10-2-2 "Forcible Entry" Defined.

A person commits a forcible entry whenever he either:

(1) Unlawfully breaks open or by any other type of unauthorized opening of the doors, windows, or other parts of a house or other residential dwelling or by fraud, intimidation or stealth, or by any kind of unlawful violence or circumstances of terror, enters upon or into any real property; or

(2) After entering peaceably upon real property, unlawfully turns out by force, threats, or menacing conduct the party in actual possession.

Sec. 10-2-3 "Forcible Detainer" Defined.

A person commits a forcible detainer whenever:

(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

(2) In the nighttime or in the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for a period of three days to surrender the same to the former occupant. The occupant of real property within the meaning of this subsection is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such property.

Sec. 10-2-4 "Unlawful Detainer" Defined.

A person commits an unlawful detainer if, being a tenant of real property with a term of less than his life, he either:

(1) Continues in possession, in person or by subtenant, of the property or any part thereof, after the expiration of the term for which it is let to him. In all cases where real property is leased or rented for a specified term or period, or by express or implied contract, whether written or parole, the tenancy shall be terminated without notice at the expiration of such specified term or period; or

(2) Having leased or rented property for an indefinite time with monthly or other periodic rent reserved, he continues in possession thereof in person or by subtenant after the end of such month or period after having been served with notice requiring him to quit the premises at the end of such month or period, such notice having been served upon him fifteen or more days prior to the end of such month or period, or in cases of tenancies at will, where he remains in possession of such premises after the expiration of a notice of not less than five days; or

(3) When he continues in possession, either in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises shall have remained uncomplied with for a period of three days; or

(4) When he assigns or sublets the leased or rented property contrary to the covenants in the lease or contract, or commits or permits waste thereon, or when he sets up or carries on thereon any unlawful business, or when he suffers, permits or maintains on or about said premises any nuisance, and remains in possession after service upon him of a notice to surrender the premises within three days; or

(5) Continues in possession in person or by subtenant, after a neglect or failure to perform any material condition or covenant of the lease or rental agreement under which the property is held, other than those hereinbefore mentioned, and after notice in writing requiring in the alternative the performance of such conditions or covenants or the surrender of the property served upon him, and, if there is a subtenant in actual occupation of the premises, also upon such subtenant, shall remain uncomplied with for five days after service thereof. Within the five-day period, any subtenant, or mortgagee of the term, or other person interested in the continuance of the term may perform such condition or covenant and thereby save the lease or agreement from forfeiture, unless such condition or covenant cannot then be performed or cannot be performed by anyone except the original tenant. If the broken covenant or condition is not capable of remedial performance after its breach, the required notice need not list such performance as an alternative.

Sec. 10-2-5 Notice - How Served.

The notices required by the preceding section may be served either:

(1) By delivering a copy to the tenant personally;
or

(2) If he is absent from his place of residence, or from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy thereof through the mail addressed to the tenant at his place of residence or place of business; or

(3) If such place of residence or business cannot be ascertained or a person of suitable age or discretion cannot be found there, then by fixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the leased property is situated.

(4) Service on a subtenant may be made in the same manner.

Sec. 10-2-6 Action to Regain Possession.

(1) The Tribal Court shall have jurisdiction to hear and decide actions to recover possession of both trust and non-trust property as a result of an alleged forcible entry, forcible detainer or unlawful detainer in an accelerated manner as provided herein. Any other action to regain possession of property may at the discretion of the judge, but need not, be handled in an accelerated manner as provided herein.

(2) In an accelerated proceeding allowed herein, the Court shall endorse on the summons the number of days within which the defendant has to answer, which shall not be less than three nor more than thirty days from the date of service. The time for reply to a counterclaim, if any, shall be deemed likewise shortened.

(3) At the close of the pleadings, the Court may advance hearing the matter on its trial calendar.